



## DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9802]

RIN 1545-BN64

Disclosures of Return Information Reflected on Returns to Officers and Employees of the Department of Commerce for Certain Statistical Purposes and Related Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that authorize the disclosure of certain items of return information to the Bureau of the Census (Bureau) in conformance with section 6103(j)(1) of the Internal Revenue Code (Code). These temporary regulations are made pursuant to a request from the Secretary of Commerce. These temporary regulations also provide clarifying language for an item of return information and remove duplicative paragraphs contained in the existing regulations. These temporary regulations require no action by taxpayers and have no effect on their tax liabilities. Thus, no taxpayers are likely to be affected by the disclosures authorized by this guidance. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective Date: These temporary regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability Date: For dates of applicability, see §301.6103(j)(1)-1T(e).

FOR FURTHER INFORMATION CONTACT: William Rowe, (202) 317-6834 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

**Background and Explanation of Provisions**

This document contains amendments to 26 CFR part 301. Section 6103(j)(1)(A) of the Internal Revenue Code authorizes the Secretary of the Treasury (Secretary) to furnish, upon written request by the Secretary of Commerce, such returns or return information as the Secretary may prescribe by regulation to officers and employees of the Bureau for the purpose of, but only to the extent necessary in, the structuring of censuses and national economic accounts and conducting related statistical activities authorized by law. Section 301.6103(j)(1)-1 of the existing regulations further defines such purposes by reference to 13 U.S.C. chapter 5 and provides an itemized description of the return information authorized to be disclosed for such purposes.

By letter dated August 2, 2016, the Secretary of Commerce requested amendments to § 301.6103(j)(1)-1 to allow disclosure of several additional items of return information to the Bureau for purposes of its economic statistics program, structuring the censuses, and related program evaluations. The Secretary of Commerce's letter lists the additional items of return information requested based on the Bureau's specific need for each item of information.

The Secretary of Commerce's letter requested additional expense items from business tax returns in order to improve the expense data that is collected by the Bureau. Specifically, the Secretary of Commerce requested disclosure of the following enumerated components of total expenses or total deductions from business tax returns

(Forms 1065, Forms in the 1120 series, and Form 1040, Schedule C, E or C/EZ): (1) repairs (and maintenance) expense; (2) rents (or lease) expense; (3) taxes and licenses expense; (4) interest expense, including mortgage or other interest; (5) depreciation expense; (6) depletion expense; (7) advertising expense; (8) pension and profit-sharing plans (retirement plans) expense; (9) employee benefit programs expense; (10) utilities expense; (11) supplies expense; (12) contract labor expense; and (13) management (and investment advisory) fees. The Secretary of Commerce has also requested purchases from Form 1125-A and the following additional items from Form 1040, Schedule C: (1) materials and supplies; and (2) purchases less cost of items withdrawn for personal use. The Secretary of Commerce determined that these additional items are needed to evaluate the quality of expense data collected from surveys and to improve the Bureau's imputation models as the Bureau faces a trend of rising non-response rates in its surveys.

The Secretary of Commerce's letter also requested additional items of return information from business tax returns for the purpose of directing a high proportion of research and development surveys towards businesses with known research activities. Specifically, the Secretary of Commerce requested the following additional items of return information from Forms 6765 (when filed with corporation income tax returns): (1) cycle posted; and (2) the research tax credit amount to be carried over to a business return, schedule, or form. The Secretary of Commerce determined that the amount of research tax credit is needed to improve the coverage and reliability of surveys that collect research and development data, and determined that the cycle posted is needed

in order to align the research tax credit with the appropriate survey year for sampling purposes.

The Secretary of Commerce's letter also requested additional items of return information for purposes of maintaining a centralized, continuous Business Register that comprehensively lists and characterizes United States business establishments and their domestic parent enterprises. The Business Register provides the central business list necessary to support the Bureau's economic census and survey activities.

Specifically, the Secretary of Commerce requested the following additional items of return information from employment tax returns: (1) if a business has closed or stopped paying wages; (2) final date a business paid wages; and (3) if a business is a seasonal employer and does not have to file a return for every quarter of the year. The Secretary of Commerce has determined that these items of return information are vital to reducing or eliminating costly mailings to businesses that have closed or are seasonal in nature. The Secretary of Commerce also requested the electronic system filing indicator from business tax returns and the cycle from the IRS's Business Master Files. The Secretary of Commerce determined that the electronic system filing indicator is needed to help establish the ideal survey mode for a particular entity (electronic or paper reporting forms).

The Secretary of Commerce's letter also requested additional items of return information for purposes of modeling firm survival for production of statistics on business dynamics. Specifically, the Secretary of Commerce has requested the following additional items of return information from business tax returns: (1) dividends, including ordinary and qualified; and (2) type of REIT (from Form 1120-REIT). The

Secretary of Commerce has determined that these items are needed to estimate models of firm survival and to estimate an owner's percentage of capital.

The Secretary of Commerce's letter also requested additional items of return information for purposes of the Survey of Business Owners. Specifically, the Secretary of Commerce has requested the following additional items of return information from Form 1065, Schedule K-1: (1) publicly-traded partnership indicator; (2) partner's share of nonrecourse, qualified nonrecourse, and recourse liabilities; and (3) ordinary business income (loss). The Secretary of Commerce has also requested ordinary business income (loss) from Forms 1120S, Schedule K-1. The Secretary of Commerce has determined that the ordinary business income (loss) and partner's share of liabilities items are needed in order to ascertain which owner's demographic information to use for the entity and as a proxy for ownership share of the partner. The publicly-traded partnership indicator is needed to save the cost of mailing surveys to publicly-traded partnerships since it is unlikely that publicly-traded partnerships could accurately provide demographic information about their owners.

Finally, the Secretary of Commerce's letter also requested additional items of return information for purposes of developing and preparing the Quarterly Financial Report. Specifically, the Secretary of Commerce requested the following additional items of return information from Forms 1120-REIT: (1) type of Real Estate Investment Trust ("REIT"); and (2) gross rents from real property. The Secretary of Commerce also requested the corporation's method of accounting from Form 1120F and the total amount reported from Form 1096. The Secretary of Commerce determined that gross rents from real property is needed to design and select the annual Quarterly Financial

Report sample, and that the type of REIT is needed for editing and imputation purposes in the event that there are characteristic differences between the types of REITs. The Secretary of Commerce determined that the corporation's method of accounting is needed to understand how businesses with different accounting methods might report differently in the Quarterly Financial Report surveys. The Secretary of Commerce has determined that the total amounts reported from Form 1096 are needed to measure labor inputs for productivity since it would provide information on labor costs not covered by administrative records or survey reports of payroll.

The Secretary of Commerce asserted that good cause exists to amend § 301.6103(j)(1)-1 of the regulations to add these additional items to the list of items of return information that may be disclosed to the Bureau. The Treasury Department and the IRS agree that amending existing regulations to permit disclosure of these items to the Bureau is appropriate to meet the needs of the Bureau. These temporary regulations amend the existing regulations to allow disclosure of the items requested by the Secretary of Commerce.

This temporary regulation also amends language in the existing regulations to clarify that the T.D. 9500, which was published in the **Federal Register** (75 F.R. 52458), authorized disclosure only of categorical information for total qualified research expenses from Forms 6765. In accordance with the preamble to T.D. 9500, the existing regulations do not authorize the disclosure of the exact amount of total research expenses as reported on Form 6765. By letter dated February 6, 2006, the Secretary of Commerce requested disclosure of categorical information on total qualified research expenses in three ranges: greater than zero, but less than \$1 million; greater than or

equal to \$1 million, but less than \$3 million; and, greater than or equal to \$3 million.

These temporary regulations amend the existing regulations to more clearly reflect the categorical nature of the disclosure of total research expenses from Form 6765.

Lastly, this temporary regulation also removes duplicate paragraphs contained in the existing regulations. Under the existing regulations, each of the following items of return information from business-related returns was authorized for disclosure by two identical paragraphs: Social Security tip income; total Social Security taxable earnings; and gross distributions from employer-sponsored and individual retirement plans from Form 1099-R. Because there is no need for duplicate paragraphs that authorize disclosure of the same items of return information for the same purpose, the duplicate paragraphs are removed.

The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

### **Special Analyses**

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations do not impose a collection of information on small entities. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for

Advocacy of the Small Business Administration for comment on its impact on small businesses.

### **Drafting Information**

The principal author of these temporary regulations is William Rowe, Office of the Associate Chief Counsel (Procedure & Administration).

### **List of Subjects in 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

### **Amendments to the Regulations**

Accordingly, 26 CFR part 301 is amended as follows:

#### **PART 301---PROCEDURE AND ADMINISTRATION**

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 301.6103(j)(1)-1T is added to read as follows:

§301.6103(j)(1)-1T Disclosures of return information reflected on returns to officers and employees of the Department of Commerce, for certain statistical purposes and related activities (Temporary).

(a) through (b)(2)(iii)(H) [Reserved]. For further guidance see §301.6103(j)(1)-1(a) through (b)(2)(iii)(H).

(I) Total taxable wages paid for purposes of chapter 21;

(J) [Reserved]. For further guidance see §301.6103(j)(1)-1(b)(2)(iii)(J).

(K) If a business has closed or stopped paying wages;



(L) Final date a business paid wages; and

(M) If a business is a seasonal employer and does not have to file a return for every quarter of the year;

(b)(2)(iv) through (b)(3)(iv) [Reserved]. For further guidance see §301.6103(j)(1)-1(b)(2)(iv) through (b)(3)(iv).

(v) Total expenses or deductions, including totals of the following components thereof:

(A) Repairs (and maintenance) expense;

(B) Rents (or lease) expense;

(C) Taxes and licenses expense;

(D) Interest expense, including mortgage or other interest;

(E) Depreciation expense;

(F) Depletion expense;

(G) Advertising expense;

(H) Pension and profit-sharing plans (retirement plans) expense;

(I) Employee benefit programs expense;

(J) Utilities expense;

(K) Supplies expense;

(L) Contract labor expense; and

(M) Management (and investment advisory) fees.

(b)(3)(vi) through (b)(3)(xxiv) [Reserved]. For further guidance see §301.6103(j)(1)-1(b)(3)(vi) through (b)(3)(xxiv).

(xxv) From Form 6765 (when filed with corporation income tax returns)—

(A) Indicator that total qualified research expenses is greater than zero, but less than \$1 million; greater than or equal to \$1 million, but less than \$3 million; or, greater than or equal to \$3 million;

(B) Cycle posted; and

(C) Research tax credit amount to be carried over to a business return, schedule, or form.

(xxvi) Total number of documents reported on Form 1096 transmitting Forms 1099-MISC.

(xxvii) Total amount reported on Form 1096 transmitting Forms 1099-MISC.

(xxviii) Type of REIT.

(xxix) From Form 1125-A—purchases.

(xxx) From Form 1040, Schedule C—

(A) Purchases less cost of items withdrawn for personal use; and

(B) Materials and supplies.

(xxxi) Electronic filing system indicator.

(xxxii) Posting cycle date relative to filing.

(xxxiii) Dividends, including ordinary or qualified.

(xxxiv) From Form 1120S, Schedule K-1—ordinary business income (loss).

(xxxv) From Form 1065, Schedule K-1—

(A) Publicly-traded partnership indicator;

(B) Partner's share of nonrecourse, qualified nonrecourse, and recourse liabilities; and

(C) Ordinary business income (loss).

(b)(4) through (b)(6)(i)(B) [Reserved]. For further guidance see §301.6103(j)(1)-1(b)(4) through (b)(6)(i)(B).

(C) From Form 1120-REIT—

(1) Type of REIT; and

(2) Gross rents from real property;

(D) From Form 1120F—corporation's method of accounting.

(E) From Form 1096—total amount reported.

(b)(6)(ii) through (d)(3)(ii) [Reserved]. For further guidance see §301.6103(j)(1)-1(b)(6)(ii) through (d)(3)(ii).

(e) Applicability date. This section applies to disclosures to the Bureau of the Census made on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(f) Expiration date. The applicability of this section expires on or before December 9, 2019.

John Dalrymple,  
Deputy Commissioner for Services and Enforcement.

Approved: November 23, 2016.

Mark J. Mazur,  
Assistant Secretary of the Treasury (Tax Policy).

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